

# Access to Court Records Procedures Quick Reference Benchcard

(last updated 1/13/2020)

## ACR Rule 6—Excluding other court records from public access

In extraordinary circumstances, a court may exclude publicly accessible court record from public access.

Four requirements must be met:

1. Verified written request filed by affected person
  - a. Shall demonstrate one of the following: 1) public interest served by prohibiting access, 2) access will create significant risk of harm to requester, other persons, or general public, OR 3) substantial prejudice to ongoing proceedings cannot be avoided (Rule 6(A))
2. Notice and right to respond
3. Public hearing
  - a. Court may deny request without hearing
  - b. If court does not initially deny request, post public notice of hearing consistent with IC 5-14-2-5
  - c. Following public notice, Court shall hold hearing on request
4. Written order
  - a. Reasons for granting request
  - b. Clear and convincing evidence that one or more requirements of ACR Rule 6(A) have been satisfied
  - c. Balances public interest and grounds for exclusion
  - d. Least restrictive means and duration to prohibit access

**\*Request and record are confidential until court ruling**

## ACR Rule 8—Consent, Failure to exclude, Improper exclusion

1. Consent
  - a. Person affected by release may affirmatively consent to public access
  - b. After consent, person affected may seek to reassert right to exclude
2. Failure to exclude from public access
  - a. Right to exclude document expressly declared confidential is never forfeited by failure to comply
  - b. If confidential document not excluded from public access, party shall comply with exclusion requirements immediately upon learning document was not excluded
3. Improper Exclusion from public access
  - a. Court records become available for public access 72 hours after notice to parties, unless ACR Rule 6 satisfied
  - b. Submitting party is responsible for resubmitting document as a public access document

**Trial Rule 86(L)(3)—court can strike non-conforming document or issue order allowing 72 hours to cure e-file defect**

## ACR Rule 9—Obtaining access to court records excluded from public access

Court record excluded from access may be made accessible if:

1. Each affected person waives confidentiality by intentionally releasing record for access; or
2. A court with jurisdiction declares:
  - a. The record should not have been excluded
  - b. The ACR Rule 6 order was improper/no longer appropriate
  - c. The court record is essential to resolution of litigation, or
  - d. Disclosure is appropriate to further establishment of precedent or development of law
3. Four conditions met (**record remains confidential until court ruling**)
  - a. Verified written request for access
    - i. Extraordinary circumstances exist, public interest served, no significant risk of harm, no prejudice to proceedings, Court Record should not be excluded under ACR Rule 5(A), (B), (C), (D) or (E)
  - b. Notice and right to respond
  - c. Public hearing
    - i. May deny without hearing
    - ii. Post public notice and hold hearing
  - d. Written order
    - i. Reasons for granting request
    - ii. Requestor has demonstrated by clear and convincing evidence
    - iii. Considers public access and privacy interests and grounds demonstrated

**\*Court may restrict use or dissemination of record to preserve confidentiality**

## ACR Rule 10-List of Excluded Records and Documents

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## ACR Rule 11-Sanctions

Failure to comply with these rules can subject counsel or party to sanctions

### Form ACR for Notice of Exclusion of Confidential Information

#### **No ACR form needed for cases excluded from public access under ACR Rule 5(A):**

- Entire cases where all court records are declared confidential by statute or other court rule
  - AD, JT, JC, JD (certain specific JD records are publicly accessible pursuant to IC 31-39-2-8), JM
  - All mental health cases filed pursuant to IC 12-26
- Entire cases sealed under Access to Public Records Act (IC 5-14-3-5.5)
- Entire cases excluded from access under ACR Rule 6
- Entire cases exclusively pertaining to investigative requests and process unrelated to a pending criminal proceeding
- All paternity records created after July 1, 1941 and before July 1, 2014
- Certain criminal expungement case files after Order granting expungement (IC 35-38-9-10(i)). The entire case is removed from public access only when arrest did not lead to conviction or juvenile adjudication, conviction/adjudication is vacated on appeal, and for misdemeanors and certain Class D and Level 6 felonies (IC 35-38-9-1 through 3 and 6)

#### **No ACR form needed to exclude from public access certain personal info about litigants, witnesses, and children under ACR Rule 5(C)1 and 5(C)2**

- Complete SSN of living persons and complete account numbers, personal identification numbers, and passwords **if NOT necessary to the disposition of the case**
- Names of child witnesses in cases involving sex offenses (replace name with designation that ensures anonymity)
- **Note – names are NOT redacted in protection order cases or on no contact orders.**

#### **No ACR form needed for certain records temporarily excluded from public access under ACR Rule 5(E)(1)**

- Entire criminal cases when a request to exclude is filed contemporaneously with a request for arrest warrant
  - These records become publicly accessible after finding probable cause unless judge determines facts present in request to exclude support reasonable belief that public disclosure will increase risk of flight by defendant, create an undue risk of harm to community or law enforcement officer, or jeopardize on-going criminal investigation
  - Order excluding access expires immediately upon arrest of defendant

#### **The ACR Form is required for (see ACR Rule 5(B), 5(C), 5(D) and 5(E)(2)):**

- Records declared confidential or excluded by federal law
- Records excluded or declared confidential by IN statute or court rule
  - Presentence investigations (IC 35-38-1-13)
  - Child custody interview, report, investigation, if ordered confidential to protect child's welfare (IC 31-17-2-20)
  - Medical records (unless patient gives written consent under IC 16-39 or IC 16-41-8 applies)
  - Alcohol and drug abuse records described in 42 USC 290dd-2 (IC 16-39-1-9)
  - Tax records (IC 6-4.1-5-10; IC 6-4.1-12-12; and IC 6-8.1-7-1)
  - Probation and Court Alcohol and Drug Program records (IC 11-13-1-8; IC 12-23-14-13)
- Case records excluded by ACR Rule 5(A) or by specific Court Order entered pursuant to ACR Rule 6
- Case records sealed in accordance with Access to Public Records Act (IC 5-14-3-5.5)
- Case records with asserted common law privilege (and not waived or overruled)
- Case records created or maintained by an agency/program for pre-trial release and supervision and problem-solving court supervision
- Records in a pending matter that pertain to permissible *ex parte* proceedings, post-charging investigatory requests for process, or requests for *in camera* review, and that have been ordered confidential by the trial judge
- Medical records compiled/created by a medical service provider and examiner reports pursuant to Trial Rule 35
- Mental health records compiled/created by mental health services provider for treatment purposes (unless patient consents or essential to resolution of case – see IC 16-39-2, IC 16-39-3-10)
  - Reports for competency to stand trial, or for purposes of the insanity defense, remain accessible to the public
- Drug or substance abuse records, including test results, when performed at the direction of a substance abuse treatment program provider or a court or court program governed by 42 CFR Part 2
- Complete SSN of living persons and complete account numbers, personal identification numbers, and passwords **if necessary to the disposition of the case** (see ACR Rule 5(C)(1))

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- Addresses (mail or email), DOB, and phone #, of natural persons who are witnesses or victims in criminal, juvenile, or civil protection order proceedings.
- Attorney addresses (residence and email) provided to the Clerk of the Supreme Court pursuant to Admission & Discipline Rule 2 except for such administrative purposes approved by the Chief Administrative Officer
- Residence of judicial officers, clerks, and other employees of courts or clerks of court
- Personal notes, organizers, or calendars, e-mail, and deliberative material of judges, jurors, court staff
- Court records on violation of post-conviction supervision (if request to exclude filed with request for warrant)
  - These records become publicly accessible after probable cause established to issue arrest warrant unless judge determines facts present in request to exclude support reasonable belief that public disclosure will increase risk of flight by defendant, create an undue risk of harm to community or law enforcement officer, or jeopardize on-going criminal investigation
  - Order excluding public access expires immediately upon arrest of defendant

### **In situations where the ACR Form is required:**

- The ACR form is filed with the trial court or clerk or in some situations is tendered in open court.
- The confidential information is filed on green paper (if paper filed) or filed as a confidential document (if e-filed).
- A separate document with the confidential information redacted shall be filed on white paper (if paper filed) or filed as a public document (if e-filed).
- The ACR form is filed on white paper (if paper filed) or filed as a public document (if e-filed) and must identify the information excluded from public access and the specific law, statute, or rule declaring the information confidential).

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## Guide to e-filing confidential information in the trial courts

	Confidential Cases	Public Cases			
If the...	Entire case is confidential by statute or rule	Entire contents of document are NOT confidential	Entire contents of document ARE confidential	Document contains BOTH public information & confidential information necessary for disposition of case	Document contains BOTH public & confidential information NOT necessary for disposition of case
<b>File redacted public access version?</b>	Ø No	✓ Yes	Ø No	✓ Yes	✓ Yes
document security	Not applicable	Public document	Not applicable	Public document	Public document
details	Not applicable	File as the lead document.	Not applicable	File as lead document. Confidential text should be redacted or omitted. Omitted pages should be replaced with placeholders.	File as lead document. Confidential text should be redacted or omitted. Omitted pages should be replaced with placeholders.
<b>File non-public access version?</b>	✓ Yes	Ø No	✓ Yes	✓ Yes	Ø No
document security	Confidential document under ACR	Not applicable	Confidential document under ACR	Confidential document under ACR	Not applicable
details	All documents in the case are confidential	Not applicable	File as the lead document. Do not redact.	File as an attachment to the public access version. Do not redact.	Not applicable
<b>File Notice of Exclusion?</b>	Ø No	Ø No	✓ Yes <b>File ACR Form</b>	✓ Yes <b>File ACR Form</b>	✓ Yes <b>File ACR Form</b> <b>*(one exception see below)</b>
document security	Not applicable	Not applicable	Public document	Public document	Public document
details	Not applicable	Not applicable	File separately as a lead document with the "Notice of Exclusion" filing code.	File separately as a lead document with the "Notice of Exclusion" filing code.	File separately as a lead document with the "Notice of Exclusion" filing code.

\*ACR Rule 5(C)(1) contains an exception to the need to file the ACR Form:

ACR Rule 5(C) Personal Information of Litigants, Witnesses, and Children:

(1) Unless necessary to the disposition of the case, the following information shall be redacted, and no notice of exclusion from Public Access is required:

- (a) Complete Social Security Numbers of living persons;
- (b) Complete account numbers, personal identification numbers, and passwords.